Crl.A. 358/2001
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS
THE HON'BLE SMT. JUSTICE A. HAZARIKA

CRIMINAL APPEAL NO.358 OF 2001

JUDGMENT AND ORDER
(CAV)
By D. Biswas, J.

This appeal is directed against the judgment and order dated 4.9.2001 passed by the learned District & Sessions Judge in Sessions Case No.31/1998 convicting the appellant under Section 302 I.P.C. On conclusion of the trial, the learned Additional Sessions Judge, Dhubri convicted the appellant and sentenced him to rigorous imprisonment for life and to pay a fine of Rs.2,000/- and, in default, to suffer rigorous imprisonment for six months.

2. The prosecution case is that on 25.6.1996 at 3 A.M., the accused hacked his wife Jahanara Bibi to death by an axe. The information was lodged by one Ashraf Ali Prodhani, uncle of the deceased. The ejahar discloses that the informant after receiving the news went to the place of occurrence. The police registered Golokganj P.S. Case No.131/1996 under Section 302/34 I.P.C. and, after completion of the investigation, submitted charge sheet against the appellant and one Fazle Rahman. The learned Sessions Judge, on receipt of the case on commitment, framed charges against both the persons under Section 302/34 IPC. On conclusion of trial, the appellant was found guilty and convicted him, as aforesaid. The learned Sessions Judge acquitted the co-accused Fazle Rahman for want of sufficient material.

3. We have heard Mr. T.J. Mahanta, learned counsel for the appellant and also Mr. KA Mazumdar, learned Public Prosecutor, Assam.

4. In this case, altogether 9 witnesses have been examined by the prosecution.

5. P.W. 7, Dr. Ali Asgor Mandal, is the medical officer. He had performed the postmortem examination on the dead body of Jahanara Bibi. The Medical Officer found the following injuries on the person of the deceased :-

(1) Incised would 3 x 2 x 3 depth into cranial Cavity 1 above the Right -row, horizontally placed over the fore-head. On dissection frontal bone was cut. On opening the cranium fore brain with maringes were cut & intra cranial haemorrhage with blood clots were found.
(2) Incised wound 3 x 2 x 1 over the right fore head horizontal near the hair line 3 above the right eye Brow.
On dissection - the frontal bone was found cut.
(3) Incised would 3 x 2 x 2 deep into cranial cavity, over the left Temporal area longitudinally placed. On dissection - Temporal Bone was found cut. On opening the cranial cavity temporal lobe was incised with intra cranial hemorrhage and blood clot was present.
(4) Incised wound 2 x 1 x ‰ vertical just before the left ear.
Internal organs were found healthy. The wounds described above were blood stained and could not be washed away. The wounds were ante mortem in nature. .

6. In the opinion of the medical officer, the cause of death was due to shock and hemorrhage as a result of injuries sustained by the deceased. The

witness was not cross-examined.

7. The evidence of P.W. 7 read with the inquest report (Ext.3) clearly establish that Jahanara Bibi died of the injuries sustained before her death. Now the question is, whether it is the appellant who had caused her death by hacking her with an axe, as alleged by the prosecution.

8. Mr. TJ Mahanta, learned counsel for the appellant submitted that there is no eye witness in this case and the prosecution has not been able to prove the case circumstantially which, in his opinion, did not complete a chain leading to the only conclusion that it is none but the accused appellant who had caused the death of his wife Jahanara Bibi.

9. Mr. Mazumdar, learned Public Prosecutor, however, argued that the circumstances brought forth in the evidence of the prosecution witnesses are consistent and they lead to the conclusion that the appellant has killed his wife. The learned Public Prosecutor further submitted that the relationship between the appellant and the deceased wife is not at all good. The deceased was subjected to physical and mental torture for which she was reluctant to go to the house of her husband. The evidence on record, according to the learned Public Prosecutor, clearly establish the embittered relationship between the two for which the appellant had killed his wife.

10. It is a fact that none of the witnesses have seen the occurrence. P.W. 1, Md. Ashrab Ali Pradhani, who had lodged the first information report is not an eye witness. From his evidence, we find that he is the uncle of the deceased. The occurrence took place in 1996. The appellant had married Jahanara Bibi about 12/13 years before and they had three children born out of the wedlock. Jahanara Bibi was taken to her parental home as there was a quarrel between the couple. Jahanara Bibi informed her father about assaults on her. She expressed her unwillingness to go back to the house of her husband. The appellant came to her parental home and wanted to take back home. But Jahanara Bibi refused to go with her husband. Next day, Fazle Rahman, father of the appellant came and on his assurance Jahanara Bibi went along with her husband. A few days thereafter the occurrence took place. One Mansur Ali informed P.W.1 that Jahanara Bibi has been killed by her husband by an axe. He went there and saw the dead body of Jahanara Bibi lying on the floor with injuries. The body was smeared with blood. Thereafter, he lodged an ejahar Ext.1. Ext. 1(1) is his signature. The police also came immediately and seized the blood stained axe from near the dead body. Ext.2 is the seizure list and Ext.2(1) is his signature thereon. This witness also signed the inquest report Ext. 3. The seized axe was tendered in evidence as material exhibit by this witness.

11. P.W. 2, Md. Jonab Ali, is the father of the deceased. In his evidence, he stated that Jahanara Bibi informed him about assaults and physical tortures by her husband and, for that reason, she was not willing to return to the house of the accused. The witness further deposed that the father of the appellant came to their house, spent the night and after deliberation assured of full security to his daughter. Thereafter Jahanara Bibi went along with him. Two-three days thereafter, Mansur Ali came and informed him that the appellant had cut his daughter Jahanara Bibi by an axe. He along with other members of his family went to the house of the appellant and saw the dead body of Jahanara Bibi smeared with blood. This witness also saw the blood stained axe lying nearby. The appellant was tied up and kept confined by his brothers.

12. P.Ws. 1 and 2 have been examined at length. Nothing could be elicited out to show that their evidence about the strained relationship between the couple is not worthy of credence. In-fact, the evidence of the witnesses clearly suggest that despite unwillingness of Jahanara Bibi, she went to the house of her husband on being assured by her father-in-law.

13. P.W. 3, Mustt. Rupban Bibi, is the mother in law of the deceased . She stated that the appellant, the deceased and their three children use to li ve in a separate house situated about 5/6 cubit away. She came to know about the death of Jahanara while she was busy in morning prayers. She did not go to see the dead body. She cannot say how Jahanara died. At this stage she was declare d hostile. It was suggested to her that she had made the following statement bef ore the Investigating Officer at the time of investigation :-

They (Yusuf Ali and Jahanara) were living in another house in our compo und as husband and wife. Although occasionally quarrel took place between them, later they reconciled. A few days ago my daughter-in-law Jahanara went to her ma ternal home at Bisondoi and returned on the day before yesterday. They were livi ng separately with their own eating arrangement for long time. Yusuf along with her wife resides at the house in the western side and I along with my husband li ve in the house in eastern side. Yesterday night we were sleeping after taking f ood. It was raining in the night. Today at 5 O'clock in the morning after saying Fazar Namaz (Norning Prayer) I came out and saw my son Yusuf Ali come out of his house started running. When asked, he told that he had killed his wife. I, t hen ran to their dwelling house. Going there I saw Jahanara Bibi is lying on the floor. She was smeared with blood. I also saw injuries in her head, forehead an d near the neck. Jahanara was still alive then. Doctor was called in to save her life. But she died before the arrival of the doctor. When Yusuf started to run, he was caught with the help of other people and kept him tied in the house. Yus uf killed his wife by cutting her with an axe. The police seized the axe and too k it away. .

14. P.W. 3 denied the above suggestion which has been duly proved by the P.W. 9 Shri Bhupen Chandra Das, the Investigating Officer.

15. P.W. 4, Md. Khalil Uddin Sheikh @ Maisor, went to the place of o ccurrence after hearing a commotion. He stated that he saw Jahanara Bibi lying i n the house of Yusuf. Jahanara was still alive with a number of injuries. When a sked, she stated that she could not identify the person who had assaulted her. H e cannot say how Jahanara died or who had killed her. This witness was also decl ared hostile by the prosecution. It was suggested to him that he had made the fo llowing statement before the Investigating Officer during investigation :-

Arriving at the house of Yusuf I enquired as to what had happened. Then my aunt (Yusuf's mother) told me that Yusuf had killed his wife. Then going to the house of Yusuf I saw that smeared with blood, Yusuf's wife was lying on the floor of the house with some cut injuries in her head and forehead. Having cut h is wife, Yusuf tried to flee away when his father caught him with the help of ot her persons and kept him tied in the house, when asked, Yusuf confessed before u s that he had killed his wife by hacking her with an axe. I was present at the P .O. when police conducted investigation today. On being produced by Yusuf the po lice seized the axe with which he (Yusuf) had killed his wife. .

16. P.W. 9, Shri Bhupen Ch. Das, the Investigating Officer, also pro ved the above contradiction.

17. P.W. 5,Md. Makbul Hussain, is the witness to the seizure and det ail discussion of his evidence is considered redundant.

18. P.W.6, Md. Jabed Ali Shek, a cultivator by profession, stated th at he was asked by the Officer-in-Charge of Police to lead him to the house of t he appellant. Accordingly, he had accompanied the Officer-in-Charge to the house of Yusuf Ali where he saw Jahanara lying dead and was told that Yusuf had kille d her. The witness stated nothing more than this.

19. The following incriminating statements are discernible from the evidence recorded above :-

(1) From PWs 1 and 2, we find that the relationship between the husband and wife was strained and Jahanara Bibi was subjected to physical and mental torture .

(2) Jahanara Bibi left for the house of her father and she was not willing t o go to the house of husband out of fear.

(3) Jahanara went to the house of the appellant on being assured of full sec urity by her father-in-law.

(4) From P.W. 3, the father of the appellant, we find that the appellant use d to live with his wife and three children in a separate house. There is no evid ence that any other male member was present in the house at the time of occurren ce.

(5) The evidence disclose that the appellant was kept tied in a separate roo m immediate after the occurrence.

(6) From P.W.8, the Investigating Officer, we find that he found the accused being tied-up by villagers. The Investigating Officer arrested him and forwarde d him to the Court.

(7) The evidence of the hostile witnesses PWs. 3 and 4 was evasive. They mad e contradictory statements before the Court for which they were declared hostile and the statements made by them before the Investigating Officer during investi gation have been duly proved from where we find that they had made clear stateme nts indicting the appellant.

20. On consideration of the above circumstances, we are of the opini on that the circumstances clearly indict the appellant as the assailant and kill er of his wife Jahanara. No other conclusion appears to be permissible in the gi ven facts and circumstances of the case.

21. In the last leg of the argument, Mr. Mahanta submitted that the examination of the accused appellant under Section 313 Cr.P.C. has not been prop erly done and at best the appellant could have been convicted under Section 304 Pt.-II I.P.C.

22. We have examined the statements recorded by the learned Sessions Judge under Section 313 Cr.P.C. The learned Sessions Judge apparently did not p ut all the incriminating circumstances separately to the accused. He had clubbed the evidence and put it before the accused in two questions. There is obviously some amount of deficiency in the statement recorded under Section 313 Cr.P.C., but the accused appellant has not been able to show as to how he is prejudiced i n the trial. Since there is overwhelming evidence pointing to the guilt of the a ccused, we did not consider that on this ground the conviction of the appellant could be set aside. We also reject the submission of Shri Mahanta that the convi ction may be altered to one under Section 304 Pt.II I.P.C. It is a case where th e accused appellant was constantly misbehaving with his wife and killed her in a brutal manner by using an axe.

23. We have also considered the judgments relied upon by the learned counsel for the appellant in the cases of State of Rajasthan -Vs.- Bhawani and another, reported in (2003 7 SCC 291; Rajkumar -Vs. - State of M.P., reported in (2004) 12 SCC 77; Dasari Siva Prasad Reddy -Vs.- Public Prosecutor, High Court of A.P., reported in AIR 2004 SC 4383 and Ramreddy Rajesh Khanna Reddy -Vs.- Sta

te of A.P., reported in (2006) 10 SCC 172. There is no dispute with regard to th e principles of law available in these judgments. But, a criminal case has to be decided on its own facts and circumstances. Mere technical defects cannot overw helm the same enabling the accused to go free. The charge brought against the ap pellant, in our opinion, has been proved by adequate evidence.

24. In the result, the appeal is dismissed.